

LOUIS CHARLES SHAPIRO, P.A.

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AUDRA CAPPS; and DOUGLAS	:	
ROBERT GIBSON, JR.,	:	
	:	UNITED STATES DISTRICT COURT
Plaintiffs	:	FOR THE DISTRICT OF NEW JERSEY
	:	CAMDEN VICINAGE
vs.	:	
	:	CIVIL ACTION
JOSEPH DIXON; BRYAN ORNDORF;	:	
JODY FARABELLA; CITY OF	:	
MILLVILLE; JOHN/JANE DOE(S) I;	:	Case No.
JOHN/JANE DOE(S) II; JOHN/JANE	:	
DOE(S) III; and JOHN/JANE DOE(S) IV,	:	
	:	COMPLAINT AND JURY DEMAND
Defendants.	:	
	:	

Plaintiffs, Audra Capps and Douglas Robert Gibson, Jr., by way of Complaint against Defendants, Officer Joseph Dixon, Officer Bryan Orndorf, Chief of Police Jody Farabella; the City of Millville, and John/Jane Doe(s) I, II, III, and IV, allege as follows:

FIRST COUNT

Violation of 42 U.S.C. section 1983 and the Fourth and Fourteenth Amendments to the United States Constitution

Cause of Action, Jurisdiction and Venue

1. This action is brought pursuant to 42 U.S.C. section 1983, based upon violations of the Fourth and Fourteenth Amendments to the United States Constitution.
2. Jurisdiction is conferred pursuant to 28 U.S.C. sections 1331 and 1343(a)(3). The Court

has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. section 1367.

3. Venue is proper in this District, pursuant to 28 U.S.C. section 1391(b)(2), as the events and/or omissions giving rise to this action occurred in the District of New Jersey.

The Parties

4. Plaintiff, Audra Capps (“Capps”), was at all relevant times a citizen of the United States and of the State of New Jersey, residing at 182 Davis Mill Road, Greenwich, New Jersey.

5. Plaintiff, Douglas Robert Gibson, Jr. (“Gibson”), was at all relevant times a citizen of the United States and of the State of New Jersey, residing at 182 Davis Mill Road, Greenwich, New Jersey.

6. Gibson is the husband of Plaintiff Capps.

7. Defendant, Officer Joseph Dixon, badge #172 (“Dixon”), at all relevant times, was a duly appointed and employed police officer with the Millville Police Department, and as such was a person acting under color of law, statute, ordinance, regulation, custom, or usage of the City of Millville and of the State of New Jersey.

8. Defendant, Officer Bryan Orndorf, badge #183 (“Orndorf”), at all relevant times, was a duly appointed and employed police officer with the Millville Police Department, and as such was a person acting under color of law, statute, ordinance, regulation, custom, or usage of the City of Millville and of the State of New Jersey.

9. Defendant, Chief of Police Jody Farabella (“Chief Farabella”), at all relevant times, was a duly appointed and employed police officer and Chief of Police of the Millville Police Department, was an officer in charge, a policymaker, and/or a supervisor, and as such was a person acting under color of law, statute, ordinance, regulation, custom, or usage of the City of Millville and of the State

of New Jersey.

10. Defendant, the City of Millville, is a municipal corporation located in Cumberland County, New Jersey. Among other things, the City of Millville maintains and operates a police department which, at all relevant times, employed the named and unknown Defendants herein.

11. Upon information and belief, there are additional persons, duly appointed employees of the Millville Police Department, the City of Millville, other law enforcement agencies and/or others, whose true names are unknown to Plaintiffs, who are responsible and liable as law enforcement officers who participated and/or acquiesced in the unconstitutional and/or tortious actions and/or omissions complained of herein which proximately caused Plaintiffs' injuries and damages. These unnamed and unknown persons, at all relevant times, were acting under color of law, statute, ordinance, regulation, custom or usage of the City of Millville, the Millville Police Department, of the State of New Jersey, and/or other law enforcement agencies, and are referred to as John/Jane Doe(s) I.

12. Upon information and belief, there are additional persons, duly appointed employees of the Millville Police Department, the City of Millville, other law enforcement agencies and/or others, whose true names are unknown to Plaintiffs, who are responsible and liable as officers in charge, policymakers, and/or supervisors, and who participated and/or acquiesced in the unconstitutional and/or tortious actions and/or omissions complained of herein which proximately caused Plaintiffs' injuries and damages. These unnamed and unknown persons, at all relevant times, were acting under color of law, statute, ordinance, regulation, custom or usage of the City of Millville, the Millville Police Department, of the State of New Jersey, and/or other law enforcement agencies, and are referred to as John/Jane Doe(s) II.

13. Upon information and belief, there are other individuals, whose true names are unknown to Plaintiffs, who are responsible and liable and who participated and/or acquiesced in the unconstitutional and/or tortious actions and/or omissions complained of herein which caused Plaintiffs' injuries and damages. These unnamed and unknown persons, at all relevant times, were acting under color of law, statute, ordinance, regulation, custom or usage of the City of Millville, the Millville Police Department, of the State of New Jersey, and/or other law enforcement agencies, and are referred to as John/Jane Doe(s) III.

14. Upon information and belief, there are other entities, the identities of which are unknown to Plaintiffs, which are responsible and liable for, and which participated and/or acquiesced in, the unconstitutional and/or tortious actions and/or omissions complained of herein which caused Plaintiffs' injuries and damages. Such entities are referred to herein as John/Jane Doe(s) IV.

15. John/Jane Doe(s) I, II, III, and IV are referred to in this Complaint regardless as to actual gender.

16. Each individual Defendant named herein is sued in his and/or her individual capacity.

17. To the extent the full and/or true name of any Defendant is discovered, Plaintiffs reserve the right to seek amendment to the caption and body of this Complaint.

Factual Allegations

A. The Takedown.

18. On February 25, 2018, at approximately 8:22 p.m., Defendant Officer Dixon pulled over Plaintiff Capps, who was driving westbound on state highway 49 in the City of Millville, on suspicion of driving while intoxicated.

19. The location at which Dixon conducted this motor vehicle stop was in front of Clark's

Liquor Store, which has, upon information and belief, a parking lot paved with asphalt, or a similar hard surface.

20. During a sometimes heated exchange, Capps told Dixon, among other things, that she wanted to call her husband, Plaintiff Gibson.

21. Dixon would not let Capps call her husband.

22. Instead Dixon ordered Capps out of the car.

23. In the parking lot attached to or in the vicinity of Clark's Liquor, Dixon began to administer various field sobriety tests.

24. Audio and video footage of these field sobriety tests were captured on a Millville Police Department patrol car's mobile video recorder ("MVR" or "dash-cam"), relevant portions of which can be viewed publicly on a link to an NJ.com article as part of its "Force Report" series: <https://www.nj.com/news/2018/12/this-nj-cop-used-more-force-than-anyone-else-is-he-violent-or-just-good-at-his-job.html>.

25. Plaintiff Capps at the time of the motor vehicle stop was 50 years old, 5'4" tall and of a slight build, weighing approximately 100 pounds or less.

26. As such, she posed no physical threat to Officer Dixon.

27. After several minutes of Plaintiff Capps performing the field sobriety tests, Dixon determined that she failed them.

28. The MVR captured what happened next, and a portion of the first approximate one minute and fifty seconds of the following public video clip demonstrates what happened to Plaintiff Capps, in slow motion: <https://www.youtube.com/watch?v=dpLyFMAs6rc>.

29. Dixon sought to arrest Plaintiff Capps by attempting to handcuff her behind her back.

30. After Dixon initially took control of Capps's hands, Capps took a step away.

31. Capps looked up at Dixon, who stood approximately a full head taller.

32. As Capps began to back up so as to not be handcuffed, Dixon grabbed hold of her.

33. The MVR revealed Dixon placing his left arm around Capps's head and/or neck in a headlock position.

34. While holding Plaintiff in a headlock, Officer Dixon lifted Capps off the ground, whirled her around in the headlock, swung Capps over his hip while she was still in a headlock, and violently slammed this much smaller female suspect to the hard pavement below.

35. Dixon fell down on top of Capps with all of his weight.

36. The dash-cam footage further showed Officer Orndorf headed towards Dixon's location, and thereafter on top of Capps, putting his knee and/or his weight on Capps's back, assisting Dixon in securing Capps in handcuffs.

37. After being lifted up from the pavement, the Defendant officers placed Capps in the back seat of a patrol car.

38. The MVR also recorded Plaintiff Capps in the back of the patrol car.

39. During the time she was in the back of the patrol car, Capps made a number of clear requests and statements:

- * **Capps requested that officers call her husband.**
- * **Capps told the officers that she could not breathe.**
- * **Capps told the officers that they had slammed her face.**
- * **Capps told the officers that her rib was broken.**
- * **Capps told the officers that she needed to go to the hospital.**

40. Yet Defendants either declined or ignored these requests – in particular, Plaintiff Capps’s immediate and legitimate need for medical treatment.

41. Instead, Dixon and/or Orndorf took Plaintiff Capps to the Millville Police Department, where police charged her with multiple offenses.

B. The Violations of Policies and Directives.

(1) Defendants Violated The New Jersey Attorney General’s Policy On the Use of Force.

42. Plaintiff Capps does not challenge the basis for the motor vehicle stop on February 25, 2018, and does not challenge the probable cause for her arrest.

43. However, and in addition to their violations of federal and state constitutional protections against unreasonable searches and seizures described herein, Defendants violated state and local guidelines governing the use of force by police officers.

44. The New Jersey Attorney General’s Use of Force Policy (revised June 2000) (the “AG UFP”) provides that, among other things:

... In situations where law enforcement officers are justified in using force, **the utmost restraint should be exercised. The use of force should never be considered routine.** In determining to use force, the law enforcement officer shall be guided by the principle that **the degree of force employed in any situation should be only that reasonably necessary.** Law enforcement officers should exhaust all other reasonable means before resorting to the use of force. It is the policy of the State of New Jersey that law enforcement officers will use only that force which is objectively reasonable and necessary.

AG UFP at 1, par. 3 (bold added).

45. The AG UFP also provides:

Deciding whether to utilize force when authorized in the conduct of official responsibilities is among the most critical decisions made by law enforcement officers. **It is a decision which can be irrevocable.** It is a decision which must be

made quickly and under difficult, often unpredictable and unique circumstances. Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decision making in the broad range of possible use of force situations. It is not possible to entirely replace judgment and discretion with detailed policy provisions.

AG UFP at 2, par. 1 (bold added).

46. As described in the Third Count of the Complaint, the use of force by Defendant Dixon has become routine.

47. As demonstrated on the MVR footage, Defendant Dixon did not exercise the “utmost restraint” and did not employ only the level of force that was “reasonably necessary” in his encounter with Plaintiff Capps, a 50-year-old woman of slight build.

48. The MVR footage demonstrates that Defendant Dixon violated the AG UFP, as the amount and type of force used upon Plaintiff Capps was far out of proportion under the circumstances of the motor vehicle stop which occurred on February 25, 2018.

49. The AG UFP policy also imposes a duty upon other officers with respect to the use of excessive force. The policy:

... reinforces the responsibility of law enforcement officers to take those steps possible to prevent or stop the illegal or inappropriate use of force by other officers. Every law enforcement officer is expected and required to take appropriate action in any situation where that officer is clearly convinced that another officer is using force in violation of state law. Law enforcement officers are obligated to report all situations in which force is used illegally by anyone. This policy sends a clear message to law enforcement officers that they share an obligation beyond the requirements of the law.

AG UFP at 1-2, par. 4.

50. Defendant Officer Orndorf failed to abide by his responsibility to intervene to prevent and to report the excessive force used by Defendant Dixon on February 25, 2018 under the AG UFP

and under section 4.1.5 of the Millville Police Department's own Rules and Regulations.

51. Instead, Defendant Officer Orndorf inflicted and/or compounded the injury sustained by Plaintiff Capps as a result of Defendant Dixon's use of excessive force.

52. The AG UFP further defines "physical force" as "contact with a subject beyond that which is generally utilized to effect an arrest or other law enforcement objective. Physical force is employed when necessary to overcome a subject's physical resistance to the exertion of the law enforcement officer's authority, or to protect persons or property. AG UFP at 3(C)(1).

53. Examples of physical force include "wrestling a resisting subject to the ground, using wrist locks or arm locks, striking with the hands or feet, or other similar methods of hand-to-hand confrontation." AG UFP at 3(C)(2).

54. By contrast, "deadly force" is "force which a law enforcement officer uses with the purpose of causing, or which the officer knows to create a substantial risk of causing, death or serious bodily harm." AG UFP at 3(E)(1).

55. On the subject of restrictions on the use of deadly force, the AG UFP provides:

A law enforcement officer is under no obligation to retreat or desist when resistance is encountered or threatened. However, a law enforcement officer shall not resort to the use of deadly force if the officer reasonably believes that an alternative to the use of deadly force will avert or eliminate an imminent danger of death or serious bodily harm, and achieve the law enforcement purpose at no increased risk to the officer or another person.

AG UFP at 5(C)(1).

*(2) Officer Dixon Violated Basic Police Academy
Training on The Use of Force.*

56. Police academy training which, upon information and belief, Defendant Officer Dixon should have received, further demonstrates that Defendant failed to use a degree of force a

reasonable police officer would use under the circumstances.

57. Effective in January 2009, and prior to Dixon becoming a Millville Police Officer, the New Jersey Police Training Commission put into effect a new Defensive Tactics Curriculum for police academy instructors teaching defensive tactics to student officers in the Basic Course for Police Officers (the “DTC”).

58. In connection with the concept of “unarmed defense,” the DTC differentiated between different types of resistance by a suspect, such as (1) “preventative resistance” which is defined as physical action that prevents an officer’s control without attempting to harm the officer, such as a subject walking away or pulling away (resisting handcuffing), DTC pars. 3.4.1, 3.4.2, and (2) “active aggression,” a physical assault/action on an officer using personal weapons of the body, other than deadly force, DTC 3.5.1.

59. As demonstrated by the MVR footage, Plaintiff Capps was not engaged in “active aggression” against an officer, but rather engaged in “preventative resistance” by attempting to move away from Officer Dixon, who was attempting to handcuff her.

60. The DTC material further recognized five “takedown techniques,” including: (1) the straight arm takedown; (2) the wrist turnout takedown; (3) the bar hammer takedown; (4) a chest grab to the inside; and (5) a chest grab to the outside.

61. As demonstrated by the MVR footage, and in response to Plaintiff Capps’s “preventative resistance” of attempting to avoid being handcuffed, Dixon did not engage in the standard DTC takedown maneuvers.

62. Section 4.10.1 (“Courtesy”) of the Millville Police Department’s own Rules and Regulations further requires officers to, among other things, “always remain calm regardless of

provocation.”

63. Instead of remaining calm in the face of Plaintiff Capps’s preventative resistance, Officer Dixon abandoned the standard DTC takedown maneuvers he should have learned during his police academy training, and instead applied a whirling headlock takedown maneuver on a much smaller suspect.

64. By his whirling headlock maneuver, Dixon knew or should have known that he was placing Capps in a situation that would create a substantial risk of causing her death and/or causing her serious bodily harm.

65. This is because the 2009 DTC material described numerous vulnerable parts of the human body, including the temples and the neck.

66. Dixon’s whirling headlock takedown maneuver, aside from putting pressure on Plaintiff’s temples about her head, could have broken her neck.

67. By lifting a subject off of the ground, with more room to fall before hitting a hard surface on the way down, Dixon’s whirling headlock takedown of Capps increased the likelihood of serious bodily injury.

68. Neither Defendant Officer Dixon nor Defendant Officer Orndorf acted as reasonable officers under the circumstances in connection with their use of force.

69. Separate and apart from, and/or as a result of the violations of the AG UFP, Millville Police Department Directives, and police academy training, Defendant Officers Dixon and Orndorf used excessive force against Capps in effecting her arrest, resulting in a violation of her rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from unreasonable searches and seizures.

70. Defendants' "irrevocable" decision to use excessive force against Plaintiff Capps resulted in very serious and permanent injuries, as described more fully below.

(3) Defendants Violated Additional Millville Police Department Policies.

71. Defendant Officer Dixon wrote in his investigation report regarding the February 25, 2018 incident that he asked Plaintiff Capps if she needed EMS to respond.

72. Yet Officer Dixon's report did not completely and accurately detail Plaintiff Capps's statements and requests for medical attention immediately after being slammed to the pavement at the Clark's Liquor Store parking lot:

Capps was picked up from the ground and walked into the back of my patrol vehicle. Capps stated that I had to call her husband as she could not breathe. Capps appeared to breathing [sic] fine at this time. Capps stated she needed to go to the hospital. Capps then stated she wanted to call her husband. Capps was advised she could call her husband once we were at the Police Department. [bracketed material added].

73. Noticeably absent from Dixon's report, and which could not have been more clearly stated on the MVR footage, was Plaintiff Capps's statement that her rib was broken.

74. The fact that Plaintiff Capps knew immediately that her rib was broken and promptly said something about it lends credence to her complaint about not being about to breathe.

75. But Dixon ignored Plaintiff's complaint that her rib was broken, and left it out of his report.

76. Defendant Dixon's ignoring of Plaintiff Capps's pleas that she needed to go to the hospital, that she could not breathe, and that her rib was broken, was in violation of the Millville Police Department's own Use of Force Policy, which, upon information and belief, provided that:

... Any person requesting and/or deemed in need of medical attention shall be transported to Regional Medical Center (Vineland) or nearest available emergency medical treatment center or hospital. Personnel shall contact EMS to request such

transportation assistance. [emphasis added].

77. Under the circumstances presented and the injury and breathing difficulty she reported, Plaintiff Capps's request for medical attention should have triggered a trip to the hospital under this policy directive.

78. Moreover, Millville's Use of Force Policy, upon information and belief, also contained additional reporting and investigatory requirements:

... The extent of the injury and the treatment offered/provided shall be documented in the body of the Investigation Report.

When necessary, especially in a deadly force incident, notify the appropriate support staff, e.g., Detective Bureau, Cumberland County Prosecutor's Office, and/or Cumberland County Sheriff's Office, who should respond to the scene and cause the appropriate level of investigative and support services, including, but not limited to: photographs, measurements, diagrams, statements, etc. When an injury or complaint of pain exists, supervisors should obtain photographic documentation to the extent possible (person upon which force was used and any affected officer).

Any employee [w]hose action(s) or use of force in an official capacity results in death or serious bodily injury to any person shall be removed from line-duty assignment pending a meaningful review.

The Chief of Police or designee and the Cumberland County Prosecutor's Office shall be immediately notified when the use of physical, mechanical, or deadly force results in death or serious bodily injury, or when an injury of any degree results from the use of a firearm by agency personnel. [emphasis added]

79. Upon information and belief, neither Dixon, Orndorf, Chief Farabella, nor the John/Jane Doe Defendants, abided by the various requirements of this departmental policy in connection with this incident.

80. Whether the force used could be characterized as "physical force" or "deadly force," this was clearly a case involving serious bodily injury – as can be seen from the actions taken by Dixon and Orndorf, and as can be heard in the statements and complaints made by Plaintiff Capps, all of

which were captured on MVR footage.

81. Finally, Defendants Dixon and Orndorf, in using excessive force, in failing to attend to Plaintiff Capps's expressed medical needs in light of the severity of her injury, and in not properly documenting the extent of her injury, violated Millville Police Department Rules and Regulations, including but not limited to 4.1.11 (Use of Force), 4.3.3 (Reports), 4.10.1 (Courtesy), and 4.12.6 (Truthfulness), among other Rules and Regulations and/or departmental directives which may be revealed in discovery.

C. The Aftermath of the Takedown and the Severity of the Injuries.

82. After Defendants refused to take her to the hospital or attend to her medical needs when requested, and after being processed at the Millville Police Department, Plaintiff Capps presented to the hospital on February 25, 2018 and again on February 26, 2018 with shortness of breath, pain located primarily at the left lateral chest wall, and, as Plaintiff Capps reported, a "rib sticking out."

83. Initial hospital diagnoses included a chest wall contusion (which Plaintiff knew immediately was not correct), and alternatively of one left side rib fracture.

84. Imaging studies later revealed healing fractures of the left *third through eighth* ribs, meaning that the force of Dixon slamming Capps to the pavement, and/or Orndorf applying his knee to her back, and/or the application of Dixon's and Orndorf's weight, resulted in Capps sustaining multiple broken ribs.

85. Plaintiff Capps treated regularly, but the injuries did not heal properly, resulting in a "nonunion" of certain of her ribs.

86. Plaintiff Capps, diagnosed at the time with intercostal neuropathy, underwent a left T5 through T8 intercostal block procedure on October 31, 2018, which resulted in no pain relief.

87. Plaintiff was required to have left chest wall reconstruction surgery on or about January 16, 2019.

88. Among other things, that surgery resulted in the removal of one of Plaintiff Capps's ribs, and nerve blocks being placed on multiple other ribs in an effort to relieve pain.

89. On or about March 22, 2019, Plaintiff received a steroid pain injection, which had little to no effect.

90. On April 17, 2019, Plaintiff underwent surgery again, for what was to be major chest wall reconstruction.

91. The April 17, 2019 surgery revealed the full extent of this gruesome injury.

92. Rather than Plaintiff's initial thought that she had another rib sticking out, the April 17, 2019 surgery revealed that cartilage had been ripped away from her bones, and nerves were tangled around the cartilage, causing severe pain to Plaintiff Capps.

93. As part of the April 17, 2019 surgery, the surgeon had to cut the nerves completely, and cut cartilage as well.

94. As a result of the surgeries Plaintiff Capps endured, she has become the recipient of scarring about her back and torso, which add an unfortunate element of significant cosmetic injury.

95. Plaintiff Capps presently cannot lift anything over three pounds.

96. Plaintiff Capps has a follow-up appointment with her doctor on May 1, 2019.

97. As such, fourteen months following Defendants' assault on her on February 25, 2018, Plaintiff is still being treated for her injuries.

98. As a result of the excessive force inflicted upon her, Plaintiff Capps also has experienced emotional trauma, including but not limited to a fear of driving, fear whenever she sees a police

officer or emergency vehicle, and nightmares.

99. The numerous doctor visits, surgical procedures, and the damaged state of her physical health, which is believed to be permanent, likewise have caused stress and anxiety in the marriage of the Plaintiffs.

100. Plaintiff Capps has lost time from her employment, sustained a loss of wages, lost vacation and sick time for two years due to doctor visits, surgeries, hospital stays and recovery time, and incurred medical expenses unreimbursed by insurance.

WHEREFORE, Plaintiff Audra Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, Officer Joseph Dixon, Bryan Orndorf, and John/Jane Doe(s) I, II, and III, individually, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with punitive damages, prejudgment interest, costs of suit, reasonable attorney's fees pursuant to 42 U.S.C. section 1988, and such other relief as the Court deems just.

SECOND COUNT

Violation of 42 U.S.C. section 1983 and the Due Process Clause of the Fourteenth Amendment to the United States Constitution

101. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

102. At the time of her arrest, Plaintiff Capps was a pretrial detainee.

103. Plaintiff Capps did not merely notify arresting officers Dixon and/or Orndorf of a minor injury, but rather informed them immediately that her rib was broken, that she could not breathe, and that she needed to go to the hospital.

104. As such, the arresting officers had reason to know of the serious nature of the injury they inflicted upon Plaintiff Capps.

105. Nevertheless, and as described herein, Defendants Dixon, Orndorf, and various John/Jane Doe Defendants ignored and/or provided Plaintiff Capps with inadequate inattention to her medical needs.

106. Said Defendants' denial of Plaintiff Capps's reasonable requests for medical treatment exposed her to undue suffering and/or to the threat of tangible residual injury.

107. Defendants were deliberately indifferent to Plaintiff Capps's serious medical needs in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, as enforced under 42 U.S.C. section 1983.

108. The rights of both convicted prisoners and of pretrial detainees who are apprehended by police to not suffer deliberate indifference to serious medical needs was clearly established law at the time of the events described herein. See e.g., Estelle v. Gamble, 429 U.S. 97 (1976); City of Revere v. Massachusetts Gen. Hosp., 463 U.S. 239 (1983); Boring v. Kozakiewicz, 833 F.2d 468 (3d Cir. 1987), cert. denied, 485 U.S. 991 (1988).

WHEREFORE, Plaintiff Audra Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, Officer Joseph Dixon, Officer Bryan Orndorf, John/Jane Doe(s) I, II, and III, individually, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with punitive damages, prejudgment interest, costs of suit, reasonable attorney's fees pursuant to 42 U.S.C. section 1988, and such other relief as the Court deems just.

THIRD COUNT

Monell Claim in Violation of 42 U.S.C. sec. 1983

109. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

110. This cause of action is brought pursuant to 42 U.S.C. §1983, the Fourth and Fourteenth Amendments to the Constitution of the United States of America, and in accordance with Monell v. Department of Soc. Serv. of the City of New York, 436 U.S. 658 (1978).

A. Factual Allegations Relevant to Plaintiff's Monell Claim

111. In or about 2017 and 2018, the Newark *Star Ledger* and/or NJ Advance Media for NJ.com (collectively, "NJ.com") began to compile data based on New Jersey police use of force reports received through public records requests.

112. The data compiled by NJ.com in its 16-month-long investigation led to a series of articles originally published in November and December of 2018 collectively referred to as The Force Report.

113. As part of its investigation, and based on the records obtained and analyzed, NJ.com determined that during his first three-plus years as a police officer for the City of Millville, Defendant Dixon reported using force more than any other police officer in the State of New Jersey.

114. NJ.com also reported that, over the studied five-year period of 2012 through 2016, Dixon's 58 instances in which he reported using force ranked him third statewide behind two other officers from different police departments who had 62 and 59 such instances of reported use of force, respectively.

115. NJ.com reported that Defendant Dixon's 58 use of force incidents in his first four years

after completing police academy training, yielded an average of more than one incident per month.

116. By contrast, NJ.com reported that the more than 17,000 New Jersey officers who reported using force over a similar period averaged less than one incident per year.

117. According to NJ.com's reporting and investigation, Dixon himself accounted for a full one-tenth of the entire Millville Police Department's use of force incidents reported, and none of the other 70-plus officers came close to his share.

118. Moreover, and according to NJ.com's reporting and investigation, with 58 reported instances of the use force during the period studied, Dixon far eclipsed the second-place finisher in the Millville Police Department, Officer Jeffrey Proffit, who reported using force 36 times during the same period.

119. Officer Proffit is currently under indictment on charges of official misconduct, assaulting suspects and falsifying records, according to NJ.com.

120. Furthermore, and according to NJ.com's reporting and investigation, Defendant Dixon reported more injured subjects than all but one other officer in the state, despite the fact that he was on the police force for only four of the five years covered by The Force Report.

121. In response to NJ.com's reporting and investigation, Defendant Chief Farabella nevertheless called Defendant Dixon "an example of a fine officer" who has never been the subject of a substantiated excessive force complaint.

122. Defendant Chief Farabella, however, and according to NJ.com, declined to say how many excessive force complaints in total had been filed against Officer Dixon.

123. Defendant Chief Farabella commented further to NJ.com by referring to Officer Dixon's duty assignment: "He's in the worst areas ... so he's gonna see more than a regular patrolman."

124. Yet the incident involving Plaintiff Capps's traffic stop and the assault by Defendants' Dixon and Orndorf arguably was not in one of Millville's "worst areas."

125. The area of the incident involving Plaintiff Capps was in a liquor store parking lot along a well-traveled state highway, and across the street from a cemetery.

126. NJ.com further has reported irregularities with some of Officer Dixon's use of force reports.

127. For instance, NJ.com reported that in the case of Plaintiff Capps, the use of force report Dixon filled out stated that Plaintiff was not injured, and that he simply restrained her.

128. More generally, NJ.com has reported that, of the 39 excessive force complaints filed against police officers in the City of Millville from 2012 through 2016, not one complaint was substantiated.

129. Furthermore, Defendant Chief Farabella, according to NJ.com, even nominated Dixon for a Public Safety Officer Medal of Valor.

130. If Dixon wins the award, there would be a chance that he would meet the President of the United States, upon information and belief.

131. NJ.com has reported in The Force Report that from 2012 through 2016, Millville's Police Department recorded 665 total uses of force, for 46.7 incidents per 1,000 arrests, and concluded that the City of Millville's Police Department used force at a higher rate than 394 other police departments in the State of New Jersey.

132. NJ.com's analysis additionally revealed that 74 officers in the Millville Police Department used force over five years, an average of 9.0 incidents per officer who used force over that five-year period, which exceeded the statewide average of 4.1 incidents per officer.

133. Upon information and belief, Defendant Dixon remains employed with the City of Millville's Police Department.

134. Defendant Chief Farabella's statement that Officer Dixon has not previously been the subject of a substantiated excessive force complaint suggests that neither Defendant City of Millville, Defendant Chief Farabella, nor any of the John Doe Defendants, have imposed discipline on Dixon for previous instances of excessive force.

135. These facts are evidence of deliberate indifference on the part of Chief Farabella and by the City of Millville and its policymakers to the pattern and use of excessive force by Dixon, to the frequent use of excessive force by the Millville Police Department, and to the questionable process employed by the Millville Police Department of investigating internal affairs complaints and as to officer discipline, among other things.

B. Legal Averments as to Plaintiff's *Monell* Claim.

136. Defendants, the City of Millville and Chief Farabella, and their policymakers, including but not limited to John Doe(s) II, had a policy or custom of failing to adequately train their officers and employees with respect to the prevention of unconstitutional and unreasonable searches and seizures and/or the use of excessive force, and were deliberately indifferent to the deficiency in training in the above regard and to the rights of persons with whom the police came in contact, which deficiencies in training proximately caused the injuries and damages complained of herein by Plaintiff Capps.

137. Defendants, the City of Millville, Chief Farabella, and their policymakers, including but not limited to and John Doe(s) II, had a policy and/or custom that tolerated the use of unconstitutional and unreasonable searches and seizures and/or the use of excessive force, which proximately caused

the constitutional injuries complained of herein by Plaintiff Capps.

138. Defendants, the City of Millville, Chief Farabella, and their policymakers, including but not limited to John Doe(s) II, and through their agents and employees, promulgated customs, policies, practices, ordinances, regulations and directives that caused and/or tolerated the use of excessive force against Plaintiff Capps.

139. Defendants, the City of Millville, Chief Farabella, and their policymakers, including but not limited to John Doe(s) II, have been deliberately indifferent to the violent propensities of its police officers and/or the individually named Defendant police officers herein.

140. Defendant, the City of Millville, Chief Farabella, and their policymakers, including but not limited to, John Doe(s) II, through the City's police department, established, knew of, and acquiesced in policies, procedures, and customs that they knew or should have known would lead to violations of individuals' constitutional rights.

141. Defendants, the City of Millville, Chief Farabella, and their policymakers, including but not limited to, John Doe(s) II, through the City's police department, acted with deliberate indifference to the consequences by failing to develop appropriate policies and/or by failing to enforce the policies, procedures and directives described herein.

142. Defendants, the City of Millville's, Chief Farabella's and John Doe(s) II's, training programs with regard to the use of force were inadequate, upon information and belief, including but not limited to the failure to train their officers with respect to the prevention of unconstitutional and unreasonable searches and seizures and/or the prevention of the use of excessive force.

143. Upon information and belief, Defendants, the City of Millville, Chief Farabella, and their policymakers, including but not limited to John Doe(s) II, also knew or should have known and

learned from previous litigation filed against them and/or against their police officers alleging the use of excessive force and information about previous unconstitutional conduct engaged in by one or more of their officers.

144. Defendants, the City of Millville, Chief Farabella, and their policymakers, including but not limited to John Doe(s) II, were deliberately indifferent to these deficiencies, and the deficiencies in training, oversight, investigation, enforcement, and discipline caused the actions of the individual Defendants set forth herein, which proximately caused the injuries and damages complained of herein by Plaintiff Capps.

145. Defendants, the City of Millville, Chief Farabella, and their policymakers, including but not limited to John Doe(s) II, upon information and belief, knew and/or were aware of and/or should have known of the deficiencies set forth in this Count, and knew and/or were aware of and/or should have known about alternatives for preventing the constitutional violations complained of herein, and/or acquiesced in a policy or custom of inaction or toleration in the above regard.

146. Defendants, the City of Millville, Chief Farabella, and their policymakers, including but not limited to John Doe(s) II, upon information and belief, additionally engaged in a custom or usage of not abiding by mandated internal affairs policies in connection with investigating officer misconduct, and were deliberately indifferent to the custom or usage of conducting deficient internal affairs investigations with a preordained goal of exonerating the officer(s) accused of excessive force, including but not limited to Defendant Officer Joseph Dixon.

147. Said custom or usage, and Defendants' deliberate indifference thereto, resulted in deficient, biased investigations leading to findings exonerating Defendant Officer Dixon, who was involved in assaulting Plaintiff Capps, which had the result of keeping such an officer on patrol, on

the street, and in a position to harm Plaintiff and others.

148. Defendants' custom or usage with regard to the investigation of complaints made against Millville police officers resulted in a sham process which permitted the police department's officers to violate the constitutional rights of individuals with impunity with the knowledge that they would not be punished for their misconduct and would be retained in their employment.

149. Defendants, the City of Millville, Chief Farabella, and their policymakers, including but not limited to John Doe(s) II, directly and proximately caused Plaintiff Capps to be subjected to an unreasonable search and/or seizure and/or to the use of excessive force, thereby violating her rights under the Fourth and Fourteenth Amendments to the United States Constitution.

150. Defendants jointly, severally and in the alternative, deprived Plaintiff Capps of her federal constitutional rights, as set forth herein, and deprived her of said rights while acting under color of state law, in violation of 42 U.S.C. §1983.

151. As a proximate cause of the actions and omissions of Defendants, Plaintiff Capps suffered great and substantial emotional and physical pain, as well as other damages and injuries.

WHEREFORE, Plaintiff Audra Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, the City of Millville, Chief of Police Jody Farabella, and John Doe(s) II and IV, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with prejudgment interest, costs of suit, reasonable attorney's fees pursuant to 42 U.S.C. section 1988, and such other relief as the Court deems just.

FOURTH COUNT

Violation of Article I, Paragraph 7 of the New Jersey Constitution

152. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

153. Plaintiff Capps brings this Count pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2 (c), (e), and (f).

154. As described herein, Defendant Officers Dixon and Orndorf, and John/Jane Doe(s) I, III, and IV, violated Plaintiff Capps's right under Article I, Paragraph 7 of the New Jersey Constitution to be free from unreasonable searches and seizures.

WHEREFORE, Plaintiff Audra Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, Officer Joseph Dixon, Officer Bryan Orndorf, and John/Jane Doe(s) I, III, and IV, individually, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with punitive damages, prejudgment interest, reasonable attorney's fees, costs of suit, and such other relief as the Court deems just.

FIFTH COUNT

Intentional Infliction of Emotional Distress

155. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

156. On or about May 24, 2018, Plaintiffs served upon Defendants a Tort Claim Notice pursuant to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq.

157. Defendants' actions as described herein were committed intentionally and/or recklessly.

158. Defendants' conduct was extreme and outrageous.

159. Defendants' actions proximately caused Plaintiff Capps to suffer emotional distress.

160. The emotional distress suffered by Plaintiff Capps was and is so severe that no reasonable person could be expected to endure it.

WHEREFORE, Plaintiff Audra Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, Officer Joseph Dixon, Officer Bryan Orndorf, and John/Jane Doe(s) I and III, individually, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with punitive damages, prejudgment interest, costs of suit, attorney's fees as may be permitted by law, and such other relief as the Court deems just.

SIXTH COUNT

Assault

161. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

162. By their actions and/or behavior described in detail herein, Defendants Dixon and Orndorf caused Plaintiff Capps reasonably to be placed in fear and to believe that she was at risk of death, physical harm and imminent bodily injury, including by Defendants' physical menace.

163. Defendants' actions were intentional and/or reckless.

164. As a proximate result of Defendants' acts, Plaintiff Capps suffered damages, including but not limited to substantial emotional upset and mental pain, suffering, grief and anguish.

165. The actions of Defendants described herein constituted the common law tort of assault.

WHEREFORE, Plaintiff Audra Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, Officer Joseph Dixon, Officer Bryan Orndorf, and

John/Jane Doe(s) I and III, individually, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with punitive damages, prejudgment interest, costs of suit, attorney's fees as may be permitted by law, and such other relief as the Court deems just.

SEVENTH COUNT

Battery

166. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

167. The actions of Defendants Dixon and Orndorf and/or of John/Jane Doe(s) I and III, as described herein, constituted the common law tort of battery.

WHEREFORE, Plaintiff Audra Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, Officer Joseph Dixon, Officer Bryan Orndorf, and John/Jane Doe(s) I and III, individually, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with punitive damages, prejudgment interest, costs of suit, attorney's fees as may be permitted by law, and such other relief as the Court deems just.

EIGHTH COUNT

Negligent Supervision

168. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

169. Upon information and belief, Defendants, the City of Millville, Chief Farabella, and/or John/Jane Doe(s) II and IV, were, at all relevant times, employers and/or supervisors of Defendant Officers Dixon and Orndorf and others who were and are responsible for the tortious and

unconstitutional actions and omissions against Plaintiff Capps.

170. The acts and/or omissions complained of herein occurred, and were within the scope of the individual Defendants' employment for, Defendants, Chief Farabella, the City of Millville, and/or for John/Jane Doe(s) II and IV.

171. Defendants, the City of Millville, Chief Farabella and/or John/Jane Doe(s) II and IV, negligently failed to supervise the actions and conduct of Defendant Officers Dixon and Orndorf and others.

172. In addition to those acts and omissions which may be revealed in discovery, and in the alternative, Defendants, Chief Farabella and/or John/Jane Doe(s) II and III, upon information and belief, failed to follow New Jersey Attorney General policy and Millville Police Department Rules and Regulations and departmental directives on the use of force, as outlined elsewhere herein, failed to train the officers on such policies, and/or failed to properly discipline officers.

173. Such failures to supervise proximately caused the injuries sustained by Plaintiff Capps.

174. These Defendants who occupied supervisory capacities within the Millville Police Department had a duty to members of the public and to Plaintiff to insure that serious injuries, such as those sustained by Plaintiff Capps, were not inflicted.

175. Such supervisory Defendants breached that duty of care to Plaintiff, and caused her damage, as described elsewhere herein.

WHEREFORE, Plaintiff Audra Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, the City of Millville, Chief of Police Jody Farabella, and John/Jane Doe(s) II and IV, individually, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with prejudgment

interest, costs of suit, attorney's fees as may be permitted by law, and such other relief as the Court deems just.

NINTH COUNT
Negligent Retention in Employment

176. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

177. Defendants, the City of Millville, Chief Farabella, and/or John/Jane Doe(s) II and IV, upon information and belief, and based on the tendencies of Defendant Officer Dixon and of the Millville Police Department generally, as reported by NJ.com, knew or had reason to know about one or more of the Defendants' unfitness, incompetence and/or dangerous attributes when it chose to retain such person(s) in employment.

178. Defendants, the City of Millville, Chief Farabella, and/or John/Jane Doe(s) II and IV, upon information and belief, knew or should have known about Defendant Officer Dixon's unfitness and high frequency with which he used force, and yet chose to nominate Dixon for an award.

179. Furthermore, when confronted with the knowledge of his police department's and Defendant Officer Dixon's disproportionate use of force, as revealed in The Force Report by NJ.com, Defendant Chief Farabella chose to defend Dixon with quotations to the media and, upon information and belief, chose to retain Dixon in employment.

180. Defendants, the City of Millville, Chief Farabella, and/or John/Jane Doe(s) II and IV, reasonably should have foreseen the likelihood that such Defendant officer(s) through their employment would come into contact with members of the public, such as Plaintiff Capps, under circumstances that would create a risk of danger to her and to such other persons because of the

qualities of the Defendant officer(s) involved in this action.

181. Defendants, the City of Millville, Chief Farabella, and/or John/Jane Doe(s) II and IV, owed Plaintiff Capps, and other members of the public, a duty to not subject them to the conduct of officers who have engaged in violent behavior and/or violated the rights of the citizens they are sworn to protect.

182. Defendants, the City of Millville, Chief Farabella, and/or John/Jane Doe(s) II and IV, breached their duties of care to protect Plaintiff Capps, which proximately resulted in the injuries and damages described herein.

WHEREFORE, Plaintiff Audra Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, the City of Millville, Chief of Police Jody Farabella, and John/Jane Doe(s) II and IV, individually, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with prejudgment interest, costs of suit, attorney's fees as may be permitted by law, and such other relief as the Court deems just.

TENTH COUNT
Negligence

183. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

184. As set forth herein, Defendants conducted and/or supervised law enforcement activities, and injured Plaintiff Capps, within their jurisdiction.

185. Defendants negligently, carelessly, and/or recklessly performed their duties.

186. Defendants breached their respective duties of care to Plaintiff Capps and to the public,

based on the facts described in detail herein.

187. Defendants' breaches of their duties of care proximately caused Plaintiff Capps to sustain damages, as alleged herein.

WHEREFORE, Plaintiff Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, Officer Joseph Dixon, Officer Bryan Orndorf, the City of Millville, and John/Jane Doe(s) I, II, III, and IV, individually, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with prejudgment interest, costs of suit, attorney's fees as may be permitted by law, and such other relief as the Court deems just.

ELEVENTH COUNT
Loss of Consortium

188. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

189. As a result of the injuries sustained by Plaintiff Capps, her husband, Plaintiff Gibson, was and has been required to provide regular care to his wife by assisting her with transportation to and from doctor's appointments, treatment, multiple surgical procedures, and time spent in the hospital, and by assisting her with ordinary and everyday tasks she did by herself prior to being assaulted by members of the Millville Police Department, and Plaintiff Gibson has provided physical and emotional support to Plaintiff Capps, his wife.

190. Plaintiff Gibson has lost the consortium and companionship of his wife as a result of her experience with the Millville Police Department, and because of the severity of the injuries inflicted upon her.

191. As a result of the injuries inflicted upon his wife by the Defendant officers, Plaintiff Gibson has been required to take her to multiple medical appointments and surgical procedures, and he has lost time from work and wages.

192. Plaintiff Gibson will continue to suffer damages on what is expected to be a permanent basis, as his wife, Plaintiff Capps, will never be the same person physically and emotionally as she was before she was assaulted by officers of the Millville Police Department.

WHEREFORE, Plaintiff Douglas Robert Gibson, Jr. respectfully requests that this Honorable Court enter judgment in his favor and against Defendants, Officer Joseph Dixon, Officer Bryan Orndorf, Chief of Police Jody Farabella, the City of Millville, and John/Jane Doe(s) I, II, III, and IV, individually, jointly and severally, in an amount that would reasonably and properly compensate him in accordance with the law, together with prejudgment interest, costs of suit, attorney's fees as may be permitted by law, and such other relief as the Court deems just.

TWELFTH COUNT
Vicarious Liability

193. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

194. At all times hereinafter described, Defendants, the City of Millville, Chief Farabella, and/or John/Jane Doe(s) II and IV, employed the individual named and unnamed police officer Defendants.

195. At all times hereinafter described, Defendants, Officer Joseph Dixon, Officer Bryan Orndorf, Chief Farabella, and/or John/Jane Doe(s) I, II, III, were employed either as law enforcement officers, policymakers, and/or supervisors for Defendants, the City of Millville and/or John/Jane

Doe(s) IV.

196. At all relevant times, said Defendants were acting within the scope of their employment for Defendants, the City of Millville and/or John/Jane Doe(s) IV.

197. Under the circumstances described herein, Defendants, the City of Millville, Chief Farabella, and/or John/Jane Doe(s) IV, are vicariously responsible and liable for the conduct of the individual officer Defendants, named and unnamed, as may be permitted by law and as may be applicable to each particular Count of this Complaint.

198. As a further direct and proximate result of Defendants' conduct, Plaintiffs were caused to suffer severe damages and injuries described herein.

WHEREFORE, Plaintiffs Audra Capps and Douglas Robert Gibson, Jr. respectfully request that this Honorable Court enter judgment in their favor and against Defendants, the City of Millville, Chief of Police Jody Farabella, and John/Jane Doe(s) IV, individually, jointly and severally, in an amount that would reasonably and properly compensate them in accordance with the law, together with punitive damages as may be appropriate to each Count of this Complaint, reasonable attorney's fees as may be permitted by law, prejudgment interest, costs of suit, and such other relief as the Court deems just.

DEMAND FOR TRIAL BY JURY

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs hereby demand a trial by jury on the causes of action pleaded in this Complaint.

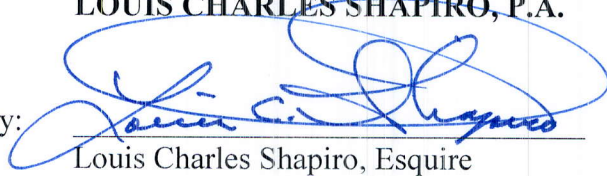
NOTICE OF DESIGNATION OF TRIAL COUNSEL

Louis Charles Shapiro, Esquire, of the law firm of Louis Charles Shapiro, P.A., is hereby designated as trial counsel on behalf of Plaintiffs, Audra Capps and Douglas Robert Gibson, Jr.

Respectfully submitted,

LOUIS CHARLES SHAPIRO, P.A.

By:



Louis Charles Shapiro, Esquire

Attorney for Plaintiffs, Audra Capps and
Douglas Robert Gibson, Jr.

DATED: May 1, 2019

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Audra Capps and Douglas Robert Gibson, Jr.**DEFENDANTS** Joseph Dixon, Bryan Orndorf, Jody Farabella, City of Millville, John/Jane Does I-IV**(b)** County of Residence of First Listed Plaintiff **Cumberland**
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant **Unknown**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

Louis Charles Shapiro, P.A., 1063 E. Landis Avenue, Vineland, NJ 08360
(856) 691-6800**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. section 1983

Brief description of cause:

Excessive force following arrest on a motor vehicle stop.

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

5/1/19

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.